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Health

Why a top food poisoning expert won't ever eat six popular foods

The way in which the American food system works is often perplexing if not entirely nonsensical, according to Bill Marler, a lawyer specializing in food-borne illness

Washington Post

Published Feb 03, 2016 • Last updated Feb 03, 2016 • 16 minute read

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In the aftermath of an E. coli [illegible] ns of people across the United States last fall, and led [illegible] ty practices, Americans reacted by avoiding the belov[illegible] ported long lines were suddenly empty, a phenomen[illegible] nwide.

The risks, in other words, were simply too great in people's minds for them to continue frequenting the Mexican-inspired favorite, because Chipotle had a food safety problem.

But the outrage was at least partly misplaced, according to Bill Marler, a lawyer specializing in food-borne illness. The outbreak, he says, was less of an anomaly specific to the chain than a symptom of the American food system, which isn't as safe as it could be and really should be.

Marler, who has been involved in many high profile outbreaks over the past 30 years, including the 1993 E. coli outbreak at Jack in the Box, which killed several children and forced the government to administer a zero tolerance for the presence of the pathogen in food, reminds that problems like the one at Chipotle are far more common than most people realize. Food recalls, of which there are many, frequently fly under the radar. In 2014, the most recent year for which data is available, more than 8,000 food products were recalled by the Food and Drug Administration and nearly 100 were recalled by the U.S. Department of Agriculture. The problem touches organic foods, too.

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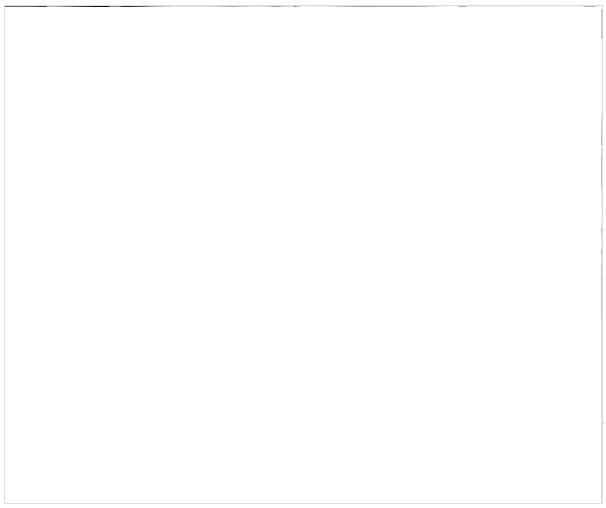

The industry, Marler says, does a good job of nudging people to forget about all this, and we all do a good job of obliging, because food safety isn't the sort of thing anyone likes to think about.

The way in which the American food system works is often perplexing if not entirely nonsensical, according to Marler. For this reason, he takes precautions people less familiar with food safety oversight might find absurd. In a recent piece, published in Bottom Line Health, he lists six foods he no longer eats, because he believes the risk of eating them is simply too large. The list includes raw oysters and other raw shellfish, raw or under-cooked eggs, meat that isn't well-done, unpasteurized milk and juice, and raw sprouts.

"You wouldn't believe some of the things I have learned over the years," he said. "I have some crazy stories."

I spoke with Marler to hear so we might want to think twice about eating, and better don't understand about food safety in the United States. Th l clarity.

Marler refuses to eat foods containing raw or undercooked eggs.

Q: Would the average person be horrified if they knew what you know about the food system?

A: I think there are a lot of things about the food system that the general public would find completely nonsensical – not necessarily frightening, but definitely nonsensical. Like how E. coli is considered an adulterant in hamburgers, but salmonella and many other pathogens are not. How salmonella is allowed on chickens, which the USDA oversees, but salmonella is not allowed in any product that the FDA oversees.

There are a lot of disparate pieces in the food safety system in the United States, and there is no one really who is fully in control of it. And the public health system is made up of 51 separate departments of public health-the CDC and 50 states – and they're not necessarily playing from the same sheet of music.

I know a lot more about the flaws in the system than the average person, and these would be incredibly perplexing to most people. If people knew these kind of things, I'm pretty sure they would question why the system is built the way it is.

Q: So it isn't safe?

A: From a safety standpoint, I don't necessarily think that we're the safest food system in the world, but neither do I think that we're the worst food safety system in the world. We do have a fairly amazing ability to surveil foodborne illnesses. Not necessarily to find out why they happened, or what we could do to prevent them, but we're pretty good at keeping track of people who have positive stool cultures. I speak all over the world on food safety issues, and almost everyone around the world uses the CDC foodborne illness statistics, and then just extrapolates those onto their populations.

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In 22 years of doing this, I've obviously seen things that are chilling. But I've also seen some great progress. I made hundreds of millions of dollars for my clients in the first decade or so of my practice off the beef industry. Most of the work we did was E. coli cases linked to hamburgers, and those are now almost non-existent, because the beef industry and the government finally figured out that it was a really bad idea to poison people, and that it was expensive, and they created systems that allowed to lower the level of E. coli in hamburger meat. Now there are fewer people getting sick, and Bill Marler isn't making as much money, which is a great thing.

Oysters at a cocktail party. Raw shellfish are a frequent culprit in outbreaks of food poisoning.

Q: Why is it that the government has acted on E. coli, but not on other pathogens, namely salmonella?

A: A crisis happened.

The Jack in the Box E. coli outbreak in January of 1993 came at an incredibly fortuitous time to get government to pay attention t ekend for Bill Clinton. In many respects, and I know thi g at USDA and at the White House, this was one of the firs E. coli crisis in the Pacific Northwest. People wanted to

The USDA, in 1994, said that E. coli could no longer be in hamburger meat, and the industry went absolutely nuts. They sued the government, saying E. coli is a naturally occurring bacteria. To the government's credit, they used science and the court agreed that the government had the power to do exactly what it did. And over time, that determination that E. coli was an adulterant worked its way through the system and got us to the place we are now.

Where we are now is kind of where we are with vaccine and people, where you have some people questioning the necessity of a system that works, without question. You know, when was the last time you saw someone with polio? But you hear people in certain parts who take that reality and then wonder whether they need to vaccine their children since polio hasn't really been around. We see places advertising that they're undercooking hamburgers, because it tastes better. I find that worrisome. Even though we've pushed a lot of E. coli out of hamburgers, they're playing with fire by not cooking their hamburgers thoroughly.

Q: Is the presence of salmonella any less dangerous?

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A: No. In my view, what the government did in 1994 with E. coli, was they knew what they wanted to do, which was to get it out of hamburger meat. They justified it by saying that the infectious dose was low, that people don't necessarily cook hamburgers the way they should-it's difficult to cook them

thoroughly, and there's a high risk of cross contamination. They had a long list of arguments as to why they needed to take that action.

But frankly all of that applies to salmonella. The infectious dose for salmonella is higher, but we're talking about infinitesimal, invisible quantities of bacteria. 100,000 bacterium of salmonella would fit on the head of a pin. So you're not really looking at a product that is grossly contaminated; you're looking at a product that is a little contaminated, and that little bit of contamination is enough to get people really sick. Salmonella kills more Americans every year than E. coli does, and can cause severe long-term complications.

Salmonella is a common contaminant of poultry products.

Q: If salmonella is so problematic, why hasn't the government protected consumers from it?

A: There's a case that goes back to the 1970s, American Health Association (AHA) vs. Earl Butz, who was the secretary of agriculture under President Nixon. The AHA didn't even know about E. coli 0157, the kind that gets people really sick, back then. They were focused on salmonella, and they wanted to

put a label on it that said 'hey consumer, you need to cook this,' and the meat industry went nuts, they said no way we're not going to do this. So the AHA sued the government because they thought it was necessary, and the government sided with the industry, and in essence said it was a naturally occurring bacterium on meat, which is untrue, and housewives – this is actually in the case, I swear – know how to cook it, what to do to make this food safe. That mentality is just below the surface in the meat industry, whether it's the beef, chicken, or any other facet. That sort of mentality that there's really nothing we can do about it, and it's really the consumer that is at fault if anybody gets sick, it's their problem. This is exactly the argument that the industry waged in 1994, with E. coli, but there the government changed its tone because there were 700 people who got sick and 4 children who died, and it was kind of hard to ignore that.

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The government has not faced a salmonella crisis like the Jack in the Box E. coli crisis in the early 1990s, that solidifies consumers, government, business, and everyone else to do the thing that would ultimately be the correct thing, which is to do with salmonella exactly what they did with E. coli 0157. And the way the system is set up now, with FSIS being in USDA and essentially just being a captured, controlled agency of the industry, it's just never going to happen.

When I applied for the job, back in 2008, and allegedly made it to the shortlist, you can imagine the industry was quite concerned about what I might do if I actually took office.

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Q: You mentioned to me in the past that you have a few major frustrations with food safety in the United States. Can you talk a bit about those?

A: I think certainly the salmonella thing is probably the biggest frustration-and maybe the biggest public health threat. That has to be on the top of my list.

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Secondly, the failure of government to have sufficient resources to allow for the level of inspection that should be required for FDA overseen products, which are different-meat, generally, is overseen by the USDA. So for instance, the USDA, or really FSIS [Food Safety and Inspection Service] in particular, looks at meat products save for fish. There's an inspector in every single meat plant in America. That came about post The Jungle, by Upton Sinclair. And, allegedly, the legislation was such that the industry was supposed to pay for the inspectors. But, unsurprisingly, the industry got taxpayers to pay for the inspectors. Now those inspectors are unionized, and now there's an inspector in every plant, and that's the system.

On the FDA's side, which is 80 percent of our other food supplies and imports, there's a skeleton crew of inspectors. Most of the foodborne illness outbreaks that I have been involved in over the past 20 or 30 years, most of the manufacturing facilities have never had an FDA inspector in them. Even if they did, it was five to 10 years earlier. And that's just the system-we chose not to have a system, which basically grew up post World War II-the mass manufacturing of foods is really a post World War II phenomenon-and by the time we started looking at that in terms of what we needed for inspections, we didn't have much interest in paying for what was safest. What's funny, or really tragic, is that we, the consuming public, pay billions of dollars every year for a sort of half-hearted system of inspections, called third-party audits, where the Wal-Marts and the Costcos and the McDonald's of the world tell their supply chain that they need to pay for an audit of their businesses. And that's been a well known problem for the industry, because when you pay for your own audit, the likelihood

that you're going to get a bad or unfavorable audit is remarkably close to zero. When you look at the audits that have been performed during some of the worst outbreaks that have occurred in the United States, it's really troubling.

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The lack of taxpayers stepping up and the government stepping up, and the allowing of third party audits that are in many respects a complete sham, is just really frustrating.

So yeah, I'd say that salmonella and government inspections are really my two main major frustrations. I think we could have a much safer food system and food supply, if we applied the rules of adulteration across the board, regardless of the product, and we had an inspection core that would actually be available. And I think we could actually make this happen, if we wanted to.

Chickens gather around a feeder at a farm on August 9, 2014 in Osage, Iowa.

Q: While reporting on Chipotle's recent foodborne illness outbreaks, several food safety experts, including yourself, suggested the company might have a hard time implementing its new rules, because the poultry industry is pretty resistant to more stringent testing for pathogens. What's up with the poultry industry?

A: The poultry industry is a tough one. If you just look at the Foster Farms outbreak that went on for 18 months, it gives you a really good sense. PBS's Frontline did this fantastic documentary about the outbreak, which I was involved in, and it really showed the scary level of symbiotic relationship that exists between the FSIS, which is the government agency tasked with overseeing food safety in the United States, and the poultry industry. Since salmonella, for reasons I cannot understand, isn't considered an adulterant, they, the FSIS, couldn't do a thing about an ongoing, clear outbreak, that was sickening several hundred people that we know about, and many times more, because the real number is something like 30 times that due to underreporting. So you're looking at an 18,000 to 20,000 person outbreak, that the government isn't doing a damn thing about, other than writing letters.

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There was this great scene in the documentary, where the interviewer is talking to an official from

FSIS. He asks what they did to Foster Farms, and the official says, “Oh, well, we wrote him a letter.’ Then he asks him what he did next, and the guy says, “Well, we wrote him another letter.'”He asks him again, and he says the same thing. And then he asks what they’re going to do if it keeps happening, and he says. “Well, we’re going to keep writing them letters.” And that’s the problem, we really don’t have the ability to hold companies accountable.

Look, you and I in about five minutes could draft a speech for FSIS about why salmonella is an adulterant. There’s plenty of explanation and evidence for how risky salmonella is, and how consumers don’t handle chicken properly and how they don’t cook it properly-really, the same exact arguments that were made for E. Coli 0157. You could easily make this argument, and the court would back you up. You’d be bucking a lot of angry chicken guys, but nevertheless you could get it done.

Are companies like Chipotle to blame, or is the framework or system they function within the real problem?

Really, this is the story of an emasculated agency, and one where they don’t even want to ask for that authority.

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The issues of food safety really come to life when there are big scares or stories. But it’s the companies that are associated with them-like Chipotle, most recently-that suffer the PR blow. Are companies like Chipotle to blame, or is the framework or system they function within the real

problem?

Each outbreak is different – the players, the causes, the size. If you look at the Chipotle case, they had six outbreaks in six months, that's pretty unprecedented. I mean, I cannot think of any restaurant, any chain, anything where there have been six outbreaks in that short of a period.

I look at what happened with Chipotle, and I just think they were so focused on their mission to serve food with integrity, as defined by their commitment to local, organic, non-GMO, and humanely raised food, that they used those words as a proxy for safe food. I think they believed, and probably people did too, that it was true. If you asked people six months ago whether they thought McDonald's or Chipotle was safer, more than 90 percent of people would have said Chipotle in an instant.

But the problem isn't really Chipotle. It's the system, which allows for these sorts of things to happen too often. Chipotle was, for the most part, complying with food safety standards. In many senses, they were exceeding them.

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You were trending on Facebook recently, because you listed a handful of things that people love to eat but you refuse to eat for safety reasons.

It depends on how you look at it. I mean, if I went back and looked at all the foods I have been involved in that have poisoned people, you could make a very long list – the things you would be left with would be very short. When I made that list, I stuck a couple things together, like unpasteurized milk and juice. It's based on more than 20 years of experience, that has taught me that these are the food items that are, from my perspective, the ones that have caused more issues, and, especially in a restaurant setting, where you're not controlling the handling of your food, are best left alone. This

doesn’t mean that other things, like cantaloupe couldn’t find their way onto the list. But these are the ones that I have had to deal with the most often over the years.

Unpasteurized juices may seem healthier, but have often been linked to food poisoning outbreaks.

Q: You keep telling me that you have all these crazy stories-all these things I wouldn’t believe. Can you share one of them?

A: I actually have the perfect one, which I told at a recent conference, and really floored people.

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Do you know the juice Odwalla? Well, the juice is made by a company in California, which has made all sorts of other juices, many of which have been unpasteurized, because it's more natural. Anyway, they were kind of like Chipotle, in the sense that they had this aura of good and earthy and healthful. And they were growing very quickly. And they had an outbreak. It killed a kid in Colorado, and sickened dozens of others very seriously, and the company was very nearly brought to its knees. [The outbreak, which was linked to apple juice produced by Odwalla, happened 20 years ago].

If you look at how they handled the PR stuff, most PR people would say well, they handled it great. They took responsibility, they were upfront and honest about it, etc etc. What's interesting though is that behind the scenes, on the legal side of the equation, I had gotten a phone call, which by itself isn't uncommon. In these high profile cases, people tend to call me – former employees, former government officials, family members of people who have fallen ill, or unknown people giving me tips. But this one was different. It was a Saturday – I remember it well – and someone left me a voicemail telling me to make sure I get the U.S. Army documents regarding Odwalla. I was like "what the heck, what the heck are they talking about?" So I decided to follow up on it, and reached out to the Army and got something like 100 pages of documents. Well, it turned out that the Army had been solicited to put Army juice on Army PX's, which sell goods, and, because of that, the Army had gone to do an inspection of a plant, looked around and wrote out a report. And here's what's nuts: It had concluded that Odwalla's juice was not fit for human consumption.

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Q: Wow.

A: It's crazy, right? The Army had decided that Odwalla's juice wasn't fit for human consumption, and Odwalla knew this, and yet kept selling it anyway. When I got that document, it was pretty incredible. But then after the outbreak, we got to look at Odwalla's documents, which included emails, and there were discussions amongst people at the company, months before the outbreak, about whether they should do end product testing-which is finished product testing – to see whether they had pathogens in their product, and the decision was made to not test, because if they tested there would be a body of data. One of my favorite emails said something like "once you create a body of data, it's subpoenable."

Q: So, basically, they decided to protect themselves instead of their consumers?

A: Yes, essentially. Look, there are a lot of sad stories in my line of work. I've been in ICUs, where parents have had to pull the plug on their child. Someone commented on my article about the six things I don't eat, saying that I must be some kind of freak, but when you see a child die from eating an undercooked hamburger, it does change your view of hamburgers. It just does. I am a lawyer, but I'm also a human.

That Odwalla story is one of the crazier stories I can think of, but there are many others, and there would be many fewer if the way we handled food safety here made more sense.

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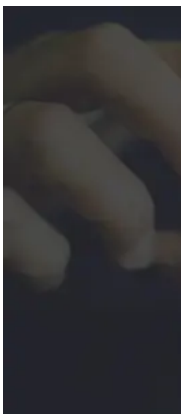

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